



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35638]

New Jersey Transit Corporation—Acquisition Exemption—Norfolk Southern Railway Company

The New Jersey Transit Corporation (NJ Transit), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Norfolk Southern Railway Company (NSR) an approximately 1.3-mile portion of the property commonly known as the “Orange Industrial Track” in Essex County, N.J., from milepost 8.616 to milepost 9.905 (the Line). NJ Transit states that, under the proposed transaction, NSR would transfer to NJ Transit the real property and railroad fixtures associated with the Line. According to NJ Transit, NSR will retain an exclusive operating easement to continue to provide freight rail service over the Line.¹

NJ Transit states the proposed transaction has been agreed upon pursuant to an Exchange Agreement, Quitclaim Deed, Second Operating Agreement, and Trackage Rights Agreement by and between NJ Transit and NSR. According to NJ Transit, it is acquiring the property to ensure access to a maintenance facility to support its light rail operations, and it is not acquiring any freight operating rights. NJ Transit also states that the agreement does not contain any provisions that would limit interchange with a third party.

¹ A motion to dismiss this notice of exemption on the grounds that the transaction does not require authorization from the Board was concurrently filed with this notice of exemption. The motion to dismiss will be addressed in a subsequent Board decision.

NJ Transit certifies that, because it will not conduct any rail carrier operations on the Line, its projected revenues from freight operations will not result in the creation of a Class I or Class II carrier.

NJ Transit states that it expects to consummate the proposed transaction at the conclusion of this exemption proceeding. The earliest this transaction may be consummated is October 31, 2012, the effective date of the exemption (30 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 24, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35638, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Ave., N.W., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: October 12, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Docket No. FD 35638

Jeffrey Herzig

Clearance Clerk

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